

THE TRAVIS COUNTY MANAGED ASSIGNED COUNSEL JOURNEY



NLADA
National Legal Aid &
Defender Association

PRESENTED BY THE NATIONAL LEGAL AID
& DEFENDER ASSOCIATION

WITH SUPPORT FROM THE OPEN SOCIETY
FOUNDATIONS



NLADA
National Legal Aid &
Defender Association

PRESENTERS

- BETTY BLACKWELL, PRESIDENT, CAPDS BOARD OF DIRECTORS
- BRADLEY HARGIS, DEPUTY DIRECTOR OF CAPDS
- MEG LEDYARD, BUSINESS ANALYST FOR THE TRAVIS COUNTY CRIMINAL COURTS

MODERATOR

MAREA BEEMAN, DIRECTOR, JUSTICE STANDARDS, EVALUATION AND RESEARCH INITIATIVE, NLADA



THE HISTORY

HOW DID WE GET HERE?



IMPLEMENTING GIDEON

1963

- Gideon v. Wainwright extends right to counsel to non-capital cases
- Travis County responds like most jurisdictions and judges begin appointing attorneys

1980s

- Travis County innovates with a wheel to rotate appointments and attorney qualifications

2001

- Texas passes SB7 requiring all criminal courts in Texas to adopt formal procedures for providing appointed lawyers to indigent defendants
- Modeled on Travis County's wheel

2011

- Travis County's wheel system needs improvement and search begins for a better model



2011 SYSTEM

1. Judges review attorney applications and approve for appropriate list.
2. Judges appoint attorneys from a public appointment list using a system of rotation.
3. Judges set the attorney fee schedule and approve all payment vouchers.
4. Judges determine resources needed (investigators, experts, immigration consultants, etc.)
5. Judges conduct annual review of attorneys and require annual verification of CLE.



WHY CHANGE?

- The pervious model doesn't comply with the ABA's 10 key principles of a Public Defense Delivery System
- The previous system doesn't provide for meaningful oversight and evaluation
 - List was closed for years
 - No meaningful quality control
 - No one has been able to move up
 - Only evaluation was subjective
- The previous system may have led to the perception that extensive judicial involvement in selection, funding, and payment of defense counsel undermined confidence in the public defense delivery system



WHY CHANGE?

- Lack of uniformity in compensation among judges
- Number and type of cases appointed can vary by individual judge
- Attorneys participating in the system that didn't meet minimal qualifications
- Attorneys received cases for which they were not qualified.
- Breakdown of rotational appointment system led to 48% of all cases being appointed from the bench
- Similar systems have been found in violation of basic requirements and federal courts have issued injunctions



ABA TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM

- | | | |
|----|--|---|
| 01 | Defense function is independent of the judiciary | ✗ |
| 02 | Consists of both a defender office and active participation of the private bar | ? |
| 03 | Clients are screened for eligibility and appointed as soon as possible | ✓ |
| 04 | Defense counsel is provided sufficient time and space to meet with clients | ✓ |
| 05 | Defense counsel's workload is controlled | ✓ |
| 06 | Defense counsel's ability, training and expertise match case complexity | ? |
| 07 | The same attorney represents the client until case is complete | ✓ |
| 08 | Parity exists between defense and prosecution with respect to resources | ✗ |
| 09 | Defense counsel is provided with and required to attend continuing legal education | ✓ |
| 10 | Defense counsel is supervised and reviewed for quality and efficiency | ? |



AREAS OF CONCERN

- Principle 1: The public defense function, including the selection, funding, and payment of defense counsel, is independent.
 - Previously none of these functions are independent of the judiciary
- Principle 8: Parity exists between defense and prosecution with respect to resources
 - Prosecution far out paces defense in availability of experts, investigators, and training resources.
- Principle 10: Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.
 - Difficult for a judge to perform this function without engaging in advocacy in individual cases.



THE WAY FORWARD

HOW DO WE IMPROVE?



OPTIONS EXPLORED

1. Try to keep or “fix” the existing judicial based model
2. Adopt a county agency based model
3. Adopt a private defender model
4. Adopt a public defender model



THE COUNTY AGENCY MODEL

- Gave the defense bar little meaningful input into the process
- Doesn't meet recommended independence recommended by the ABA
- Doesn't provide peer based evaluation
- The road we were on:
 - The MAC was originally proposed as a county agency
 - Defense bar was brought in only when this process was well underway
 - Considerable buy-in to a change in the process already present among judges



PRIVATE DEFENDER MODEL

- Significantly controlled by the defense bar
- Near complete independence of the judiciary
- All quality determinations are peer based
 - Development of peer accepted performance standards
- Dedicated and independent office with primary responsibility for indigent defense resources (compensation, investigations, expert, etc.)



PRIVATE DEFENDER MODEL

- Resources for mentorship, training, and second chair assistance
- Peer based recommendations for expert assistance and investigators
- More effective tools for case management
- Standardized compensation and evaluation
- Maintains private and independent representation model



PUBLIC DEFENDER MODEL

- Gives the defense bar little meaningful input into the process
- Is independent of the judiciary
- Dedicated and independent office with primary responsibility for indigent defense resources (compensation)
- Significant loss of quality attorney resources
- Significant costs to implement and operate
- DOES NOT maintain private and independent representation model
 - Some private representation for conflict list
 - Majority of indigent defense would be handled by much smaller group of attorneys



OUR CHOICE

A PRIVATE DEFENDER



OPTIONS IN FORMING A PRIVATE DEFENDER

Texas statute provides 3 options for a private defender structure. TCCP §26.047(b)

1. Bar Association
2. Non-profit
3. Governmental Entity

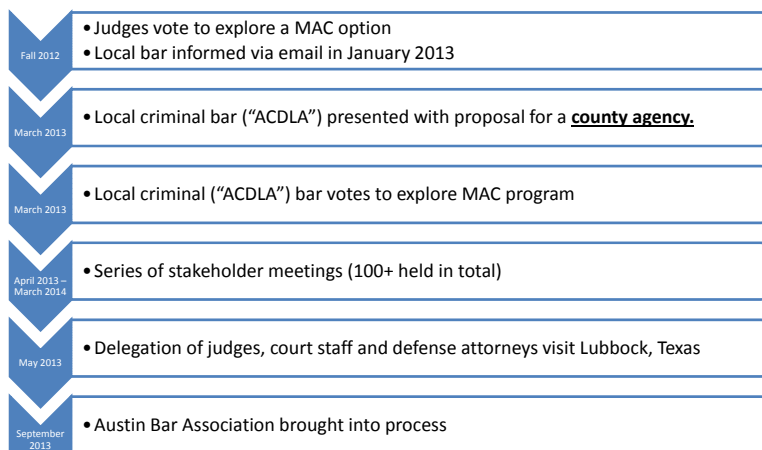


CHALLENGES WITH EACH

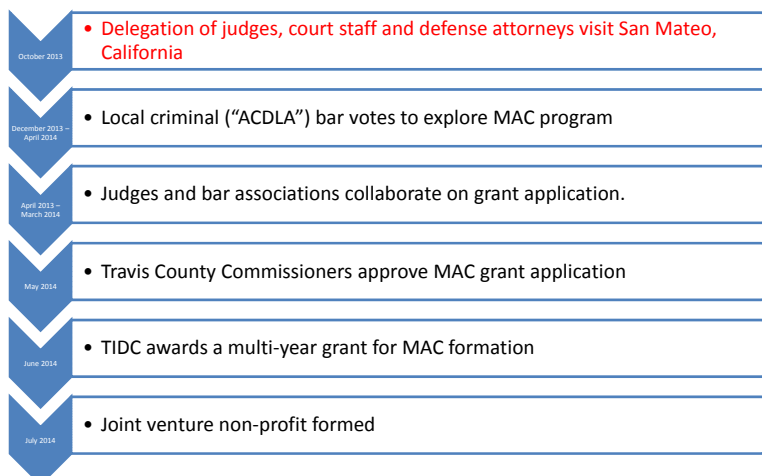
- Bar Association
 - Local bar divided into criminal and civil
 - Austin Bar Association - Civil bar was large and well established but had little to no involvement with criminal matters
 - Austin Criminal Defense Lawyers' Association – Effectively represented the criminal bar but small, few resources, and not well organized.
- Non-profit
 - No existing non-profit was appropriate
- Governmental Entity
 - Did not achieve independence sought and was strongly opposed by local bar.



THE PROCESS



THE PROCESS



KEYS TO IMPLEMENTATION

- Process is time consuming
 - Will need key players willing to commit considerable time
 - We met more than 100 times before implementing our MAC
 - Key players spent 100s of hours on the process
- 360° buy-in required
 - Will eventually have to bring all stakeholders to the table
 - Our process included judges, defense attorneys, court staff, county executives, elected officials, and community groups
 - Don’t underestimate the need for buy-in from larger constituencies such as the entire bar, community activist groups, etc.



KEYS TO IMPLEMENTATION

- Understand / Explain the change
 - Carefully study your indigent defense system
 - It is more complex than you think.
 - Fully analyze the disruption
 - Implementing a MAC will require other departments to change, expand, or reduce their functions.
 - Private defenders are novel
 - Consider site visits
 - Bring in representatives
 - Be prepared to message consistently on what can and can't be accomplished by a MAC
- Be prepared to sell it
 - Local politicians and key decision makers
 - Prosecutors
 - Community groups



THE CAPITAL AREA PRIVATE DEFENDER SERVICE

OUR NON-PROFIT

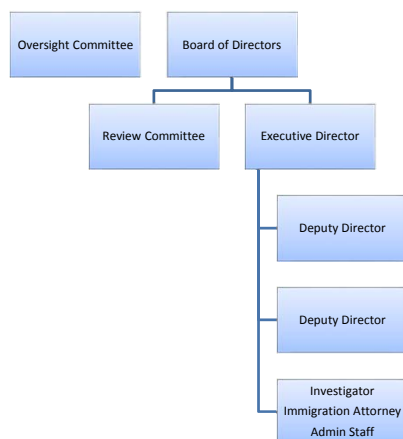


TRAVIS COUNTY CHOOSES A NON-PROFIT STRUCTURE

- Best match for Travis County needs
 - Addressed distrust of governmental entity
 - Addressed concern that neither bar association was the right fit
- CAPDS is a joint venture of:
 - ACDLA (Austin Criminal Defense Lawyers' Assoc.)
 - Austin Bar Association
 - Oversight by County Leadership



ORGANIZATION STRUCTURE



LEADERSHIP

- Board of Directors ("BOD")
 - 7 voting members
 - 3 ex officio members (non-voting members)
- Oversight Committee
 - County leadership
- Review Board
 - Panel of experienced and respected attorneys



OVERSIGHT COMMITTEE

Membership

1. Presiding District Court Judge
2. Presiding County Court Judge
3. Court Administrator
4. Criminal Justice Planning Chair
5. Commissioner
6. Director of Mental Health
Public Defender
7. Director of Juvenile Public
Defender

Function

- Annual contract review
- Quarterly meetings with BOD on state of organization
- Monthly reports of status of funds spent
- Annual report presented for review and comment before publishing



BOARD OF DIRECTORS

Voting Membership

- 2 ACDLA Board Members
 - 1 elected by membership
 - 1 elected by ACDLA BOD
- 2 ABA Board Members
 - 1 must be active in criminal defense
- 1 Selected by Oversight Committee (retired senior criminal judge)
- 2 non-practicing attorneys with fiduciary/business experience

Function

- **Cannot accept court appointments**
- Fiduciary responsibilities
- Financial disclosures
- Hires/fires director
- Approves budget
- Approves recommendations of Review Committee
- Meets with Oversight Committee



BOARD OF DIRECTORS

Non-Voting Membership

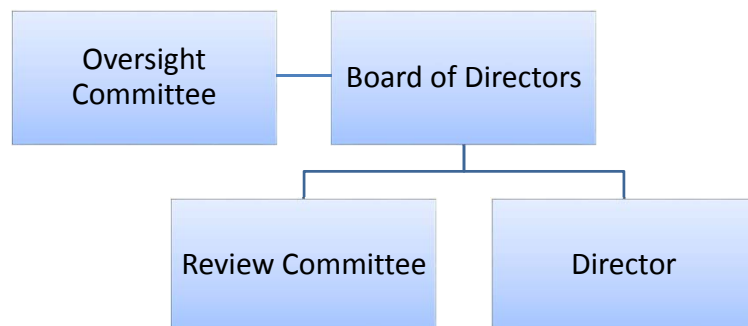
- 1 ACDLA Ex Officio Member
- 1 ABA Ex Officio Member
- 1 Ex Officio Member selected by the CAPDS BOD

Function

- **Must accept court appointments**
- Provides first hand experience of panel practice
- Communicates and advocates for panel members



LEADERSHIP STRUCTURE



REVIEW COMMITTEE

- First program to use this model
- Structure
 - Authorized by statute – TCCP §26.047(e)
 - 3-11 members
 - 10 years minimum criminal law experience
 - 3 members sit on any case review and full panel on annual panel review
 - May add additional temporary members as approved by BOD to hear individual cases
 - Cannot be on court appointment list
 - Recruited/Nominated by Chair of the Review Committee and approved by BOD
 - Serve 1 year renewable terms



REVIEW COMMITTEE

- Function

- Final determination on qualified attorneys for list
- Final determination on level on list
- Hears appeals of CAPDS Director determination on vouchers (further appeals per statute)
- Hears specific allegations of unsatisfactory performance based on subject matter area
- Hears any matter referred by the CAPDS Staff for adverse action against panel member



BENEFITS OF THE MAC SOLUTION

Independence – MAC makes all determinations regarding compensation and qualifications

Verification – MAC sets all standards and ensure compliance with those requirements

Oversight – MAC independently supervises & mentors attorneys

Performance Measures – Evaluates attorney effectiveness

Consistency – Provides single point of review for vouchers

Quality – Dedicated investigator & enhanced review of experts



USING DATA FOR MANAGING DEFENDERS

MEG LEDYARD



WHAT WE WANTED

- Meaningful metrics
- Useful for practitioners/policy makers
- Input from local stakeholders
- Worked with NLADA and NC
- Continuous Improvement



WHY IS DATA SO IMPORTANT?

- Evaluation
- Management
- Advocacy



STRATEGY

- Determine the goals of the local community
- Work with nationally recognized leaders to develop Key Performance Indicators (KPI's)
- Tailor KPI's to local values
- Use business based technologies to enter and present data to users/ administration
- Continually work with users to improve the value of the data to users



VALUES COMMITTEE

- Committee of Defense Bar, Judges, Policy Makers, Texas Indigent Defense Commission (TIDC)
- Quality, Efficiency, Fairness, Compliance, Access, Continuous Improvement
- Important to educate lawyers and judges about using statistics in this way



DATA ELEMENTS DEVELOPMENT

- What would we like to measure ideally?
- What can we measure today?
- What is the low hanging fruit for new data elements?
- What are the most important for the future?



DATA ELEMENTS

- About 60 total measure
- Have about half in use today



Indigent Defense Values, Goals, and Measures



Value: Compliance		
Goals:		
I. Comply with the Travis County Indigent Defense Plan and State Law		
Objectives	Measures	Source
1. Prompt magistration	% magistrated within 48 hours (Fel.) % magistrated within 24 hours (Mis.)	Statute
2. Indigence determination standards follow Travis County fair defense plan	% appointed by each standard	Local Plan
3. Attorneys meet Travis County fair defense plan qualifications	% meeting requirements	Local Plan
4. Prompt appointment	% in jail appointed within one working day	Statute
5. Attorney selection process is fair and neutral	Top 10% percent of attorneys on each wheel have less than 30% of the appointments from that wheel	Statute



DATA LITERACY/ACCEPTANCE

- What can averages tell us?
- Correlation vs. Causation
- Are the groups we are comparing identical before entry into system?



DEVELOPING THE VISUALIZATION

- People will want to see the data in a variety of ways
- Control for differences
 - What if we look only at people who are in jail at disposition?

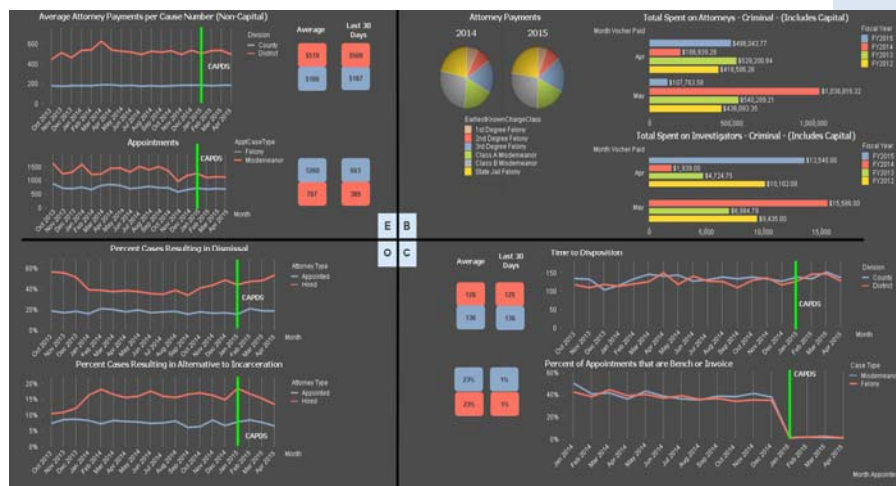


USING THE DATA: MANAGEMENT

- Where is the data useful
 - Compliance with the Law
 - Efficiency
 - Quality?
- What incentives do we create?



DASHBOARD OVERVIEW



COMPLIANCE

Travis County Fair Defense Plan Requirements and State Law

Indigence determination standards follow Travis County fair defense plan

Counsel is promptly appointed according to the law

Attorneys meet Travis County fair defense plan qualifications

Attorney selection process is fair and neutral

Defense Counsel's ability training and experience match the complexity of the case.

Defense counsel's workload is controlled to permit the rendering of quality representation.

Defendant is advised of right to counsel

Registration occurs within the legally required time frame

Clients are uniformly screened for indigence

Best Practices for a Strong Indigent Defense System

Public Defense function is independent

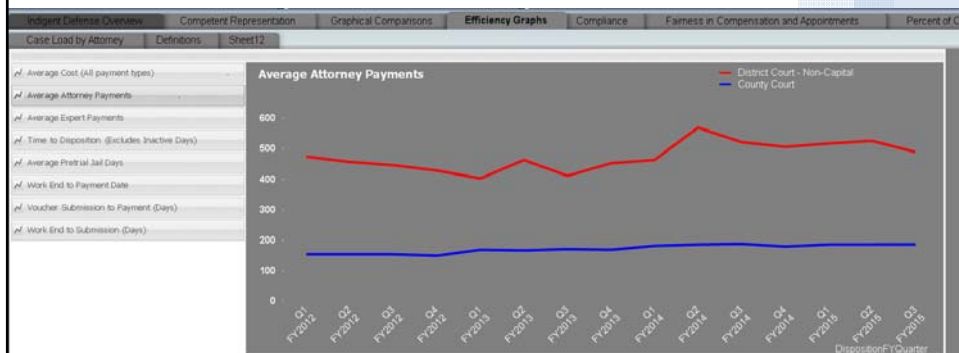
Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards

Defense counsel is provided sufficient time and confidential space within which to meet client

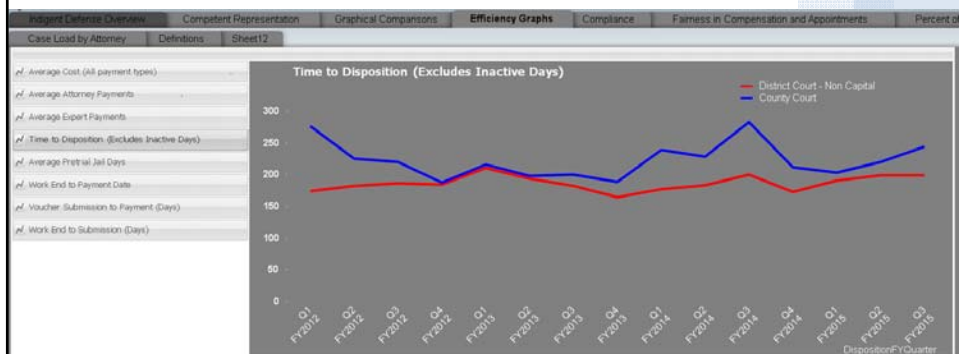
Client is continuously represented by the same attorney



EFFICIENCY



EFFICIENCY

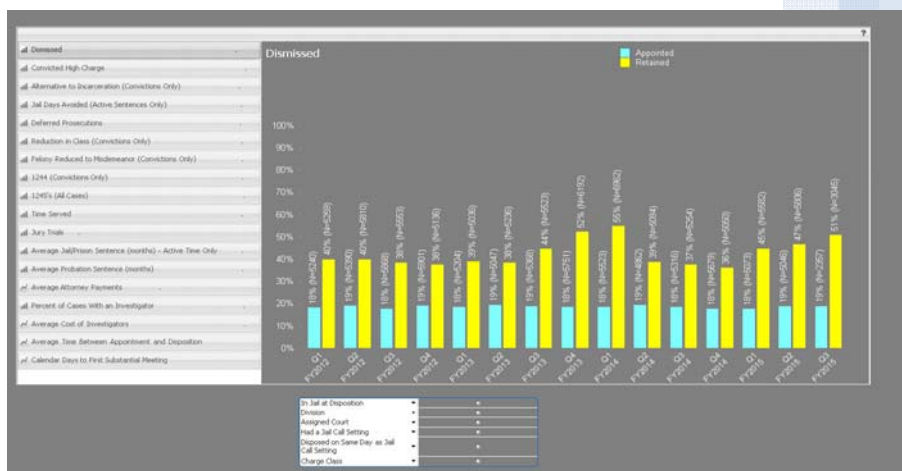


COMPETENT REPRESENTATION

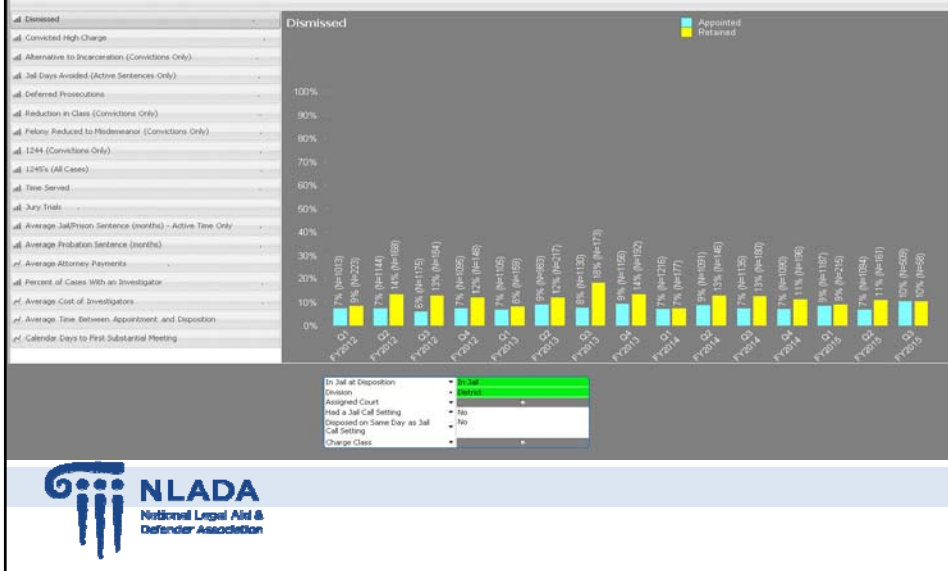
Dismissed	-
Convicted High Charge	-
Alternative to Incarceration (Convictions Only)	-
Jail Days Avoided (Active Sentences Only)	-
Deferred Prosecutions	-
Reduction in Class (Convictions Only)	-
Felony Reduced to Misdemeanor (Convictions Only)	-
1244 (Convictions Only)	-
1245's (All Cases)	-
Time Served	-
Jury Trials	-
Average Jail/Prison Sentence (months) - Active Time Only	-
Average Probation Sentence (months)	-
Average Attorney Payments	-
Percent of Cases With an Investigator	-
Average Cost of Investigators	-
Average Time Between Appointment and Disposition	-
Calendar Days to First Substantial Meeting	-



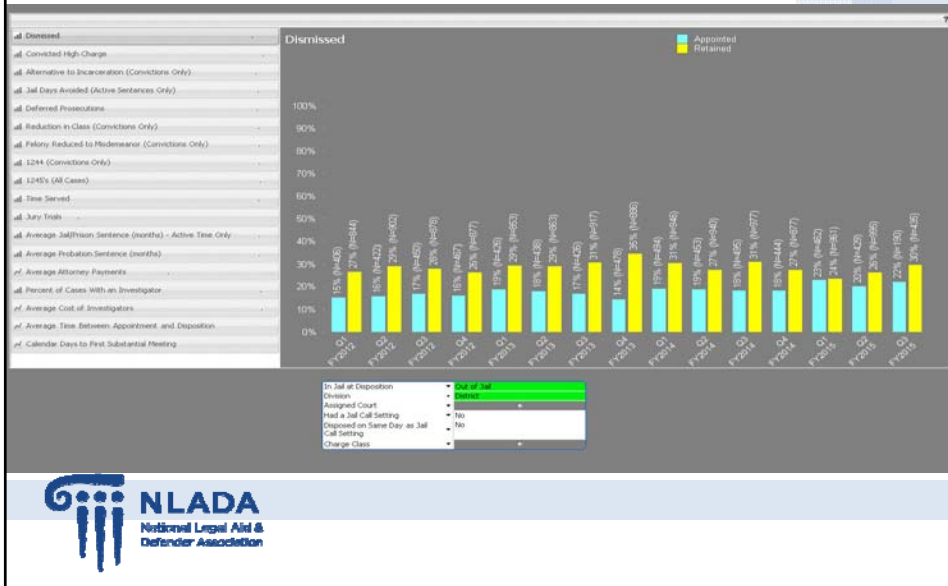
COMPETENT REPRESENTATION: DISMISSALS



DISMISSALS: FELONY IN JAIL



DISMISSALS: FELONY OUT OF JAIL



INDIVIDUAL ATTORNEYS

- Plan to roll out data to individual attorneys
 - Caseloads
 - Time to First Substantial Meeting
 - Time to Disposition (In Jail vs. Out of Jail)
 - Cases Bonded



CAUTION

- When you measure things, people will start to care about them.
- Focus on the opportunities rather than punishment
- Incentives Matter



THANK YOU!

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